No. 97-889

Supreme Court, U.S.
FILED
JAN 29 1998
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CEASAR WRIGHT,
Petitioner,
v.

UNIVERSAL MARITIME SERVICE CORP.;
STEVENS SHIPPING & TERMINAL CO.;
STEVEDORING SERVICES OF AMERICA;
RYAN-WALSH, INC.;
STRACHAN SHIPPING CO.;
CERES MARINE TERMINALS, INC.; and
SOUTH CAROLINA STEVEDORES ASSOCIATION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF *AMICI CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL, THE LABOR POLICY ASSOCIATION, and THE EMPLOYERS GROUP IN SUPPORT OF RESPONDENTS

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BRIEF *AMICI CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL, THE LABOR POLICY ASSOCIATION, and THE EMPLOYERS GROUP IN SUPPORT OF RESPONDENTS

The Equal Employment Advisory Council (EEAC), the Labor Policy Association (LPA), and the Employers Group respectfully submit this brief as *amici curiae*.[1] Letters of consent from all parties have been

[1] Counsel for the *amici* authored the brief in its entirety. No person or entity other than the *amici* or their counsel made a monetary contribution to the preparation or submission of the brief.

filed with the Clerk of the Court. The brief urges this Court to affirm the decision of the court below and, thus, supports the position of the respondents, Universal Maritime Service Corporation *et al.*

INTEREST OF THE *AMICI CURIAE*

EEAC is an association of employers formed in 1976 to promote sound programs to end employment discrimination. Its members include more than 300 of the nation's largest private employers. Its directors and officers include many of industry's leading experts on equal employment opportunity and affirmative action. Their combined experience gives EEAC valuable insight into the practical, as well as legal aspects of equal employment opportunity (EEO) policies and practices.

LPA is an organization of the senior human resources officers of more than 250 of the nation's largest companies, collectively employing more than 12 million Americans. Since its founding in 1939, LPA has been concerned exclusively with the development and implementation of laws and public policies affecting human resources practices in the private sector. LPA's mission is to ensure that such laws and policies are sound, practical, and responsive to the needs of the modern workplace.

The Employers Group, headquartered in California, is one of the nation's oldest and largest human resources management associations. It represents nearly 5,000 companies of all sizes in every industry, employing in the aggregate approximately 2.5 million employees. Formerly known as the Merchants & Manufacturers Association and the Federated Employers, the Employers Group has been involved as *amicus curiae* in many significant employment cases.

The *amici's* members are employers subject to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, and other EEO laws, as well as to the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* Many of them have contracts with their employees governing some or all terms and conditions of employment. Some of these contracts have been arrived at through collective bargaining with employee representatives, while others are products of direct dealings with unrepresented employees. Many such contracts contain provisions requiring arbitration of employment-related claims and disputes.

The *amici*'s members have an ongoing interest in preserving the enforceability of agreements calling for arbitration of employment-related disputes, whether arrived at through collective or individual bargaining. Arbitration provides a fair, efficient, and effective means of resolving discrimination claims and other employment-related issues that otherwise would clog the courts. Because of their interest in this subject, the *amici* have filed friend-of-the-court briefs in numerous cases supporting the enforceability of arbitration agreements, as well as many other important issues of employment law.[2]

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[2] For example, EEAC filed briefs supporting mandatory arbitration of statutory discrimination claims in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991); *Austin v. Owens-Brockway Glass Container, Inc.*, 78 F.3d 875 (4th Cir.), *cert. denied*, 117 U.S. 432 (1996); and *Great Western Mortgage Corp. v. Peacock*, 110 F.3d 222 (3d Cir.), *cert.*

STATEMENT OF THE CASE

Following a 1992 workplace injury, petitioner Ceasar Wright claimed to be totally and permanently disabled. After he received a quarter-million dollar worker's compensation settlement, however, Wright's condition improved unexpectedly, and he reported to his union hiring hall saying he was ready to return to work. Over the next few days, he worked for several different stevedoring firms on referrals from the union. The firms balked, however, when they learned that Wright had received a large monetary settlement for a total and permanent disability. Relying on provisions of the applicable collective-bargaining agreement, they informed the union that they no longer would accept Wright for employment.

The union protested the stevedoring firms' decision, but neither it nor Wright pursued the matter through the grievance-and-arbitration procedure of the collective-bargaining agreement. Instead, at the union's suggestion, Wright went to a lawyer, with whose assistance he filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) alleging that the firms had discriminated against him in violation of the Americans with Disabilities Act. Upon receipt of a right-to-sue letter from the EEOC, Wright sued in federal court on his ADA claim.

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denied, 118 S.Ct. 299 (1997). LPA filed a brief supporting mandatory arbitration of Fair Labor Standards Act claims in *Albertson's Inc. v. United Food and Commercial Workers Union*, Civ. No. 97-35500 (9th Cir.) (decision pending). The Employers Group has filed *amicus* briefs in *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1995) and *Livadas v. Bradshaw*, 512 U.S. 107 (1994).

The case was referred to a magistrate judge, who recommended that it be dismissed because Wright had failed to submit his claim to arbitration as required by the collective-bargaining agreement. The magistrate judge concluded that the case was controlled by the Fourth Circuit's decision in *Austin v. Owens-Brockway Glass Container*, 78 F.3d 875 (4th Cir.), *cert. denied*, 117 S. Ct. 432 (1996), which holds that a collectively-bargained agreement to arbitrate employment-related claims bars a covered employee from suing on statutory discrimination claims, at least without first exhausting arbitration.

The district court agreed with the magistrate judge and dismissed Wright's lawsuit. On appeal, the Fourth Circuit affirmed the dismissal. Relying on *Austin*, the Fourth Circuit observed that "collective bargaining agreements to arbitrate employment disputes are binding upon individual employees even when the dispute involves a federal cause of action," and that "[w]here such an agreement exists, a failure to process a claim under the agreement precludes a court from exercising jurisdiction." (Pet. App. at 4a). This Court granted *certiorari* on March 2, 1998.

SUMMARY OF ARGUMENT

It is now settled that when an *individual* agrees, as a condition of employment, to submit all employment-related disputes to arbitration, that agreement stands "on the same footing as other contracts" and is enforceable with respect to statutory discrimination claims as well as other disputes. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). The central question in this case is whether the same holds true when a *union* makes such an agreement on behalf of

employees it represents. The court below properly concluded that it does.

Under the National Labor Relations Act (NLRA), a union duly selected by a majority of the employees in a unit appropriate for collective bargaining is the exclusive representative of *all* the employees in such unit for the purposes of negotiating and entering into contracts with their employer governing their "rates of pay, wages, hours of employment, or other conditions of employment." 29 U.S.C. § 159(a). Thus, when employees choose a union as their agent, they authorize it to bind them—both collectively and individually—to agreements covering the whole gamut of "terms and conditions of employment."

It is well settled that a procedure for resolving employment-related claims and disputes is a "term or condition of employment"—and thus a mandatory subject of collective bargaining—within the meaning of the NLRA. Accordingly, an agreement to adopt such a procedure lies well within the ambit of subjects on which a union can bind the employeees for whom it speaks.

This Court has recognized that it is perfectly appropriate—and, indeed, consistent with important federal policies—for an employer and an employee to agree in advance, as a condition of employment, to "trade[] the procedures and opportunities for review of the courtroom for the simplicity, informality, and expedition of arbitration" as the means of resolving any disputes that may arise out of their employment relationship, including statutory claims. *Gilmer*, 500 U.S. at 31, *quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

In a unionized setting, however, the only way such an agreement ordinarily can come into being is through collective bargaining, for the NLRA bars employers from dealing directly with union-represented employees over dispute-resolution procedures. *See, e.g., Hughes Tool Co.*, 56 N.L.R.B. 981 (1943), *enf'd as modified*, 147 F.2d 69 (5th Cir. 1945). Yet, under the rule the petitioner seeks in this case, a collectively-bargained agreement to arbitrate statutory claims would be unenforceable against employees who assert such claims, and hence would be of little or no value to the employer.

Thus, the rule petitioner seeks would create an anomaly in employment law. It would make it virtually impossible for union-represented employees and their employers to exercise the same, basic right that the unrepresented employee in *Gilmer* and his employer exercised with this Court's approval—*i.e.*, the right to trade the procedures of the courtroom for the more efficient, less expensive procedures of arbitration with respect to statutory claims.

The petitioner and his *amici* argue that the EEO laws' central policy of protecting individuals against discrimination trumps the NLRA's central policies of majority rule and exclusive representation. But there is no need to decide in this case which of these statutory policies takes precedence, because individuals' substantive rights under the EEO laws can be protected as effectively through arbitration as through judicial processes. As this Court has recognized, an agreement to arbitrate statutory claims does not waive any substantive rights afforded by the EEO laws; it merely submits to their resolution in a different forum. *Gilmer*, 500 U.S. at 26. This is equally

true whether the agreement to arbitrate such claims was negotiated individually or collectively.

The union's duty of fair representation under federal labor law stands as a bulwark against any danger that individuals' rights might suffer as a result of their subordination to collective interests under the NLRA. *See Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 705 (1983); *Humphrey v. Moore*, 375 U.S. 335, 342 (1964); *Vaca v. Sipes*, 386 U.S. 171, 177-78 (1967). Thus, majoritarian control over the selection of the forum for resolving employees' job-related complaints and charges is fully compatible with effective protection of their individual, substantive rights under the EEO laws.

At bottom, most of the arguments supporting the petitioner's position in this case rests on the outmoded "suspicion of arbitration" that this Court denounced in *Gilmer*, 500 U.S. at 30. Those arguments run counter to strong federal policies favoring arbitration. The importance of those policies is amplified in the employment context by the explosive growth of employment-law litigation in the federal courts. Congress and the judiciary have long recognized that arbitration can, as one court put it, "serve as therapy for the ailment of the crowded docket." *Securities Indus. Ass'n v. Connolly*, 883 F.2d 1114, 1116 (1st Cir. 1989), *cert. denied*, 495 U.S. 1054 (1990). Given the current, overwhelming federal caseload, such "therapy" has never been more appropriate and necessary.

ARGUMENT

I. THE COURT BELOW PROPERLY HELD THAT A COLLECTIVELY-BARGAINED AGREEMENT TO ARBITRATE ALL DISPUTES ARISING OUT OF AN EMPLOYMENT RELATIONSHIP IS ENFORCEABLE WITH RESPECT TO STATUTORY CLAIMS IN THE SAME MANNER AS THE INDIVIDUALLY-BARGAINED AGREEMENT IN *GILMER*

A. Agreements to Arbitrate Employment-Related Disputes Stand on the Same Footing as Other Contracts and Are Enforceable With Respect to Statutory Claims

In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), this Court held that an arbitration agreement that an individual signed "[a]s a condition of his employment," *id.* at 23, in which he pledged to submit to arbitration any dispute that might arise out of his employment or the termination thereof, was enforceable under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, so as to require him to arbitrate his subsequent claim that his employer violated his rights under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.* In so holding, the Court emphasized that the federal policy underlying the FAA places arbitration agreements "on the same footing as other contracts," 500 U.S. at 24, 33, and makes them enforceable with respect to statutory claims, the same as with respect to other types of claims. *Id.* at 26.[3]

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[3] An exception is made where it is shown that Congress intended to preclude waivers of judicial remedies under a particular statute. *Gilmer*, 500 U.S. at 26. However, after a careful analysis of the text, history, structure and purpose of the ADEA, this Court found no evidence of intent to

The present case involves an arbitration agreement that is generally similar to the one in *Gilmer*.[4] The only significant difference is that, while Gilmer himself signed the document containing his agreement to arbitrate, petitioner Wright was represented by a labor union, which negotiated and executed the arbitration agreement in this case as part of a broader collective-bargaining contract covering Wright and his cohorts. That distinction, however, should not affect the enforceability of the agreement. For, as we show below, an arbitration agreement entered into on behalf of employees by their duly chosen collective-bargaining agent is binding on the individuals the union represents, just as if they had signed the agreement themselves.

Gilmer was an action to enforce an arbitration agreement under the FAA, but collectively-bargained arbitration agreements also are enforceable under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185. In Section 301 cases, this Court has long held that union-represented employees may not sue in court on claims raising issues covered by a

preclude waivers of judicial remdies under that statute. *Id.* at 26-36. As discussed *infra* p. 13, a similar analysis of the Americans with Disabilities Act—the statute on which petitioner Wright bases his claim in this case—not only shows it to be devoid of any evidence of congressional intent to preclude such waivers, but in fact contains an express congressional endorsement of arbitration.

[4] As the court below noted, the agreement in this case required arbitration of "all matters affecting wages, hours, and other terms and conditions of employment." (Pet. App. at 4a). In similarly broad language, the agreement in *Gilmer* required arbitration of "any dispute, claim or controversy" arising out of Gilmer's employment. 500 U.S. at 23.

collective-bargaining agreement that contains a grievance and arbitration procedure, at least without exhausting that procedure first. *See Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965); *Vaca v. Sipes*, 386 U.S. 171, 184 (1967). Thus, the decision of the court below holding that Wright's failure to pursue his claim through the contractual grievance procedure barred his suit in court is consistent with well-established labor law principles.

B. An Arbitration Agreement Negotiated and Executed by a Duly-Selected Collective-Bargaining Agent Is Binding on the Employees on Whose Behalf It Was Made

Section 9(a) of the National Labor Relations Act (NLRA), 29 U.S.C. § 159(a), provides that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . ."[5] That section embodies two of the NLRA's most important, central concepts. First, it establishes the principle of exclusive representation—*i.e.*, that a union chosen

[5] A proviso to this section states that "any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect." A further proviso requires that the bargaining representative be given an opportunity to be present at such adjustment." 29 U.S.C. § 159(a).

by the majority of the employees in an appropriate unit is the sole bargaining agent for *all* the employees in the unit. Second, it defines the scope of such an agent's authority broadly to encompass all matters relating to "terms or conditions of employment." Within that broad ambit, the union can enter into agreements that are binding not only on itself and the employer, but on all the employees in the unit it represents. *See J. I. Case Co. v. NLRB*, 321 U.S. 332, 338-39 (1944). With respect to such matters, the employer is prohibited from dealing directly with employees, or with any other agent on their behalf. *See NLRB v. Katz*, 369 U.S. 736, 743 (1962).

It has long been recognized that a procedure for resolving employment-related complaints or disputes is a matter falling squarely within the ambit of "terms or conditions of employment." *See United Electrical, Radio & Machine Workers v. NLRB*, 409 F.2d 150, 156 (D.C. Cir. 1969). *See also NLRB v. Montgomery Ward & Co.*, 133 F.2d 676 (9th Cir. 1943); *NLRB v. Boss Mfg. Co.*, 118 F.2d 187 (7th Cir. 1941); *WJA Realty Ltd. Partnership*, 308 N.L.R.B. 728 (1992). Indeed, a leading labor law treatise includes grievance and arbitration procedures in a list of topics that "are now so clearly recognized to be mandatory subjects of bargaining that no discussion is required." *The Developing Labor Law* 885, 885 n. 192 (Patrick Hardin ed., 3d ed. 1992). Consequently, application of long-settled NLRA principles dictates the conclusion that the choice of the forum for resolving any employment-related claims petitioner Wright or his unit colleagues might raise was an issue on which their union, as their exclusive bargaining agent, could make a binding, enforceable contractual commitment on their behalf.

To rule otherwise would destroy the mutuality of obligations on which collective bargaining depends. In labor contracts, a provision for arbitration of disputes typically is a *quid pro quo* for a no-strike/no-lockout clause. Together these provisions are the keys to industrial peace. As such, they are among the most important forms of consideration the parties exchange in entering into such agreements. If an employer cannot enforce a collectively-bargained agreement that all employment-related claims and disputes will be submitted to arbitration, the empoyer plainly will have been denied the benefit of its bargain.

Wright and his *amici*, however, urge this Court, in effect, to carve out an exception to these bedrock NLRA principles. They ask the Court to rule that even if a union is an employee's duly-chosen, exclusive bargaining agent, the union cannot consent on the employee's behalf to an agreement requiring the employee to submit statutory claims to arbitration. Such a rule would create an anomaly in employment law. It effectively would deny union-represented employees and their employers any practical way to do what the unrepresented employee in *Gilmer* and his employer did with this Court's subsequent approval—that is, to "trade[] the procedures and opportunities for review of the courtroom for the simplicity, informality, and expedition of arbitration" as the means of resolving statutory claims. *Gilmer*, 500 U.S. at 31, *quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

Gilmer recognizes that such agreements are entirely legitimate and enforceable when entered into between an *individual* and employer. In a unionized setting, however, individual employees ordinarily cannot enter

into such agreements with their employer on their own behalf, because the employer cannot by-pass the union and deal directly with employees on a mandatory subject of collective bargaining without violating the NLRA. *See Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944); *Fairhaven Properties*, 314 N.L.R.B. 763 (1994). Consequently, *collective* bargaining is the only way in which union-represented employees ordinarily can trade the procedures of the courtroom for the more efficient, less costly processes of arbitration.

Under the rule petitioner seeks in this case, however, employers would have little or no incentive to agree to collectively-bargained arbitration procedures covering statutory claims, because the petitioner's rule would make such agreements unenforceable against individuals who assert such claims. This Court should reject such an anomalous rule and hold instead, in keeping with long-established NLRA principles, that an arbitration agreement executed by an employee's duly-chosen, exclusive bargaining representative is binding on the employee and enforceable like any other contract, just as if the individual signed it personally.

II. STRONG FEDERAL POLICIES FAVOR THE ENFORCEMENT OF COLLECTIVELY-BARGAINED AGREEMENTS TO ARBITRATE EMPLOYMENT-RELATED DISPUTES, INCLUDING STATUTORY CLAIMS

A. Enforcement of Agreements to Submit Statutory Claims to Arbitration Is Fully Consistent with the EEO Laws' Policy of Protecting Individuals Against Discrimination

As this Court recognized in *Gilmer*, strong federal policies support the enforcement of private agree-

ments to arbitrate disputes and claims. 500 U.S. at 25. *Gilmer* emphasized the policies embodied in the FAA, including the policy of putting arbitration agreements "on the same footing as other contracts." *Id.* at 24, 33. In the context of collective bargaining, additional strong policy support for enforcement of such agreements is expressed in Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, and in this Court's decisions in the *Steelworkers Trilogy*[6] and other cases.

Furthermore, the statute under which petitioner Wright asserted his claim in this case—the Americans with Disabilities Act—expressly declares that:

> Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including . . . arbitration, is encouraged to resolve disputes arising under this chapter.

42 U.S.C. § 12212. Thus, Congress not only has *not* expressed an intent to *preclude* enforcement of agreements to arbitrate claims arising under the ADA, but has expressed affirmative support for arbitration as a means of resolving such disputes. Significantly, Congress enacted the legislation adding this language to the ADA *after* this Court handed down its decision in *Gilmer*.[7]

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[6] *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[7] The above-quoted language of 42 U.S.C. § 12212 was added to the ADA as Section 110 of the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, 1081, which Con-

Petitioner and his *amici* would have this Court treat these strong federal policies favoring enforcement of arbitration agreements—as well as the interrelated NLRA policies of majority rule and exclusive representation—as all being secondary in importance to the EEO laws' policy of protecting individuals against discrimination. But their argument poses a false dichotomy. There is no need to decide in this case which of these federal policies is the more important—or to subordinate one statute's policies to another's—because there is no inherent conflict between them. For the individual rights guaranteed under the EEO laws can be effectuated just as successfully by enforcing agreements to arbitrate as by allowing individuals direct access to the courts.

As this Court has recognized, an agreement to arbitrate statutory claims does not amount to a waiver of any of the substantive rights guaranteed to individuals under the EEO laws. It merely submits to a different forum for their resolution. *Gilmer*, 500 U.S. at 26. An arbitrator can enforce substantive statutory rights as effectively as a judge or jury, and in most cases more quickly and efficiently. This is equally true whether the agreement to arbitrate was made directly by the individual, or by a union on behalf of a group of employees that selected it as their bargaining agent.[8]

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gress passed on October 30, 1991, and President Bush signed into law on November 21, 1991. Thus, *Gilmer* had been the law of the land for over five months when Congress' endorsed arbitration as a means of resolving ADA disputes "[w]here appropriate and to the extent authorized by law."

[8] It also is equally true whether the statutory rights involved arise from the Sherman Act, 15 U.S.C. §§ 1-7; Section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C.

Furthermore, even if, contrary to this Court's observation in *Gilmer*, a union's agreement to substitute arbitration for courtroom adjudication of statutory claims could properly be characterized as a waiver of individuals' substantive statutory rights, that would not provide a valid ground for denying enforcement of such agreements. For this Court has held that, when employees select a union to represent them, they invest the union with power to waive their statutory rights through the collective bargaining process. *See Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 705 (1983). Indeed, in that case the Court made clear that this authority includes the power to waive not only statutory rights that are collective in nature, such as the right to strike and the right to refuse to cross picket lines, but also to waive protected rights that are individual in nature. *Id.* at 706-07.

As this Court recognized in *Metropolitan Edison*, federal labor law contains a built-in safeguard against any danger that a union's exercise of the authority to waive the rights of those it represents might somehow diminish the substantive protection afforded them by statutes. That protection lies in the duty of fair representation which the law imposes on a union serving as a bargaining agent. *Id.* at 706 n.11 ("[T]he National Labor Relations Act contemplates that individual rights may be waived by the union so long as the union does not breach its duty of good-faith representation."). *See also Air*

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§ 78j(b); the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*; or Section 12(2) of the Securities Act of 1933, 15 U.S.C. § 77*l*(2); or the federal equal employment opportunity laws. *See Gilmer*, 500 U.S. at 26, and cases there cited.

Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65 (1991); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Humphrey v. Moore*, 375 U.S. 335 (1964). Thus, there is no inconsistency between the EEO laws' goal of protecting individuals against discrimination in employment and the labor laws' policy of allowing a majority-selected bargaining agent to select the procedural forum in which disputes over such rights will be resolved.

B. Federal Policies Favoring Enforcement of Voluntary Agreements to Arbitrate Must Prevail Over Outmoded Suspicion of Arbitration

Petitioner and his *amici* argue that this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), requires reversal of the Fourth Circuit's decision in this case. Contrary to their contentions, however, *Alexander* does not preclude enforcement of a collectively-bargained agreement requiring submission of statutory discrimination claims to arbitration. *Alexander* simply does not address that issue. It merely holds that when an arbitrator has rendered a decision based on wholly contractual claims, that decision does not bar a subsequent Title VII suit to enforce statutory claims. The Court in *Alexander* observed that contractual rights and statutory rights "have legally independent origins and are equally available to the aggrieved employee." 415 U.S. at 52. It stressed that the arbitrator in that case was "confined to the interpretation of the collective bargaining agreement." *Id.* at 53.

Thus, *Alexander* turned on a distinction between contractual claims, which were covered by the applicable arbitration agreement in that case, and statutory claims, which were not. *Id.* at 52-53. It did not address situations like the one in this case, in which an arbitration agreement plainly covers statutory as well as contractual discrimination claims. As the Fourth Circuit noted in *Austin*, this fact alone distinguishes *Alexander*, 78 F.3d at 883 n.2.

Furthermore, as this Court expressly recognized in *Gilmer*, *Alexander's* marked distrust of labor arbitration as an adequate forum for resolving statutory discrimination claims is out of step with the Court's recent holdings. 500 U.S. at 34 n.5. In light of today's realities, courts simply cannot afford to foreclose the alternative of arbitration. Since 1974, when *Alexander* was decided, cases filed in the federal courts have increased by over 150 percent.[9] Statistics with respect to employment cases are even more glaring. Between 1969 and 1990, employment claims filed in federal court increased by over two thousand percent. Federal Courts Study Committee, Report of the Federal Courts Study Committee 61 (1990). Since 1990, the number of such claims has tripled.[10] To compound matters, increases in the total number of federal judgeships have not kept pace with court filings. In 1974, the number of cases filed per district court judgeship was 358. By 1997, that figure had risen to 480.[11]

Even these dramatic numbers do not tell the full story, however. As Chief Justice Warren Burger rec-

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[9] Source: Statistics Division, Administrative Office of U.S. Courts.

[10] Source: Statistics Division, Administrative Office of U.S. Courts.

[11] Source: Statistics Division, Administrative Office of U.S. Courts.

ognized some 17 years ago, "people's patience with the judicial system is wearing thin." *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 752 (1981) (dissenting opinion). Thus, as Chief Justice Burger put it, a holding that limits enforceability of a voluntary agreement to arbitrate statutory claims "runs counter to every study and every exhortation of the Judiciary, the Executive, and the Congress urging the establishing of reasonable mechanisms to keep matters of this kind out of the courts." *Id.*

Arbitration provides an extrajudicial means by which disputes that typically arise in the employment setting can be resolved in a more efficient and less expensive manner, without further burdening our overcrowed court system.

> The reasons favoring arbitration are as wise as they are obvious: litigation is costly and time consuming, and more importantly to the point in this case, judges are less adapted to the nuances of the disputes that typically arise in shops and factories than shop stewards, business agents, and managerial supervisors . . . . By bringing together persons actually involved in the workplace, often assisted by a neutral arbitrator experienced in such matters, disputes are resolved swiftly and cheaply. This mechanism promotes industrial harmony and avoids strikes and conflicts, it provides a swift, fai and inexpensive remedy.

Id. at 747-48.

"Congress passed the Federal Arbitration Act . . . to help legitimate arbitration and make it more readily useful to disputants. The hope has long been that the Act could serve as therapy for the ailment of the

crowded docket." *Securities Indus. Ass'n v. Connolly*, 883 F.2d 1114, 1116 (1st Cir. 1989). Viewing the strong endorsements of arbitration by Congress and this Court against the ominous backdrop of the current, overwhelming federal caseload, such "therapy" is more appropriate and necessary now than ever.

CONCLUSION

For the reasons discussed above, the *amici curiae* respectfully submit that the court of appeals' decision dismissing petitioner Wright's Americans with Disabilities Act lawsuit because of his failure to submit his claims to arbitration as required by the collective-bargaining agreement should be affirmed.

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